IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2344 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DULEBHAI LATIFBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2344 of 2005

MS SN QURESHI for Petitioner No. 1

MR IM PANDYA, AGP for Respondent No. 1-3

M IA SHAIKH for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 07/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by the District Magistrate, Ahmedabad on 27th January, 2005 in exercise of powers conferred upon him vide Sub-Section (2)(a) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (PBM Act for short). The petitioner is under detention in pursuance of the said order from 6th January, 2005.

2. The grounds of detention as placed on record reveal that the petitioner was, at the relevant time, retail distributor of kerosene on licence issued by the State Government. The shop of the petitioner was inspected and checked by the Supply Department Officer of the District of City of Ahmedabad on 11th August, 2004, 25th August, 2004 and 26th August, 2004. It was found that during the month of May, June and July, 2004, the petitioner had disposed of 317 liters of kerosene illegally by adopting practice of fabricating duplicate bills, issuing quota of kerosene to cancelled ration cards, making false entries in the distribution of SBC/DBC scheme and preparing fabricated bills. It was also found that in the bill books full names and addresses of the consumers were not mentioned. The sale register was not properly maintained and some other irregularities were also found. The kerosene for the industrial purpose is available in open market at very higher price. Therefore, the Government has set up a system to distribute kerosene to lower and middle income commune, by subsidized rates for house hold purpose. The kerosene is an essential commodities within the meaning of Essential Commodities Act, 1955. The petitioner was issued a licence to distribute kerosene to above class of citizens. The State Government has converted white kerosene in blue kerosene to identify the same as essential commodity. In view of the detaining authority, the petitioner was indulged in illegal activities of disposing of blue kerosene in open market on higher price. In view of the detaining authority, these activities of the petitioner were prejudicial to the maintenance of supplies of essential commodities to the community. The detaining authority also concluded that such activities of the petitioner were required to be prevented forthwith and though a prosecution was launched against the petitioner for the breach of Sections 3 and 7 of the Essential Commodities Act, 1955 and though a licence to the petitioner was suspended for 90 days, but such steps were not sufficient to prevent illegal activities of the petitioner, as aforesaid. The detaining authority, therefore, reached to the subjective satisfaction that there was no other alternative, except to detain the petitioner under the PBM Act to prevent his

prejudicial activities. The detaining authority passed an order of detention of the petitioner which is under challenge in this petition.

3. Learned advocate Ms.Sahin Quareshi for the petitioner, learned AGP Mr.I.M.Pandya for the respondents No.1 to 3 and learned Standing Counsel for the Central Government Mr.M.I.A.Shaikh for the respondent No.4 were heard at length. The affidavit-in-reply as filed by the detaining authority, affidavit-in-reply as filed by Mr.H.C.Kapadia, Deputy Secretary of the Government of Gujarat, Food, Civil Supplies & Consumer Affairs Department, Sachivalaya, Gandhinagar and affidavit-in-reply filed by Mr.A.K.Ganguly, under Secretary in the Department of Consumer Affairs, Food and Public Distribution, New Delhi, were also taken into consideration.

4. Various grounds were urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP and learned Standing Counsel, it appears that this petition can be disposed of and examined on the sole issue as to whether the detenu's right to make effective representation under Article 22(5) of the Constitution of India is infringed.

5. My attention was drawn to the documents served upon the detenu at the time of execution of the order, two documents placed at page No.17 and 69 of this compilation alleged to be illegible. On scrutiny, it is found that the document placed at page No.17 is a notice issued by the Supply Department to the petitioner wherein some gaps are filled up, but those gaps are totally illegible. It is also found that on the top of the document placed at page No.69, above the date which is 6th January, 2005, nothing is legible, except a number "174". This document appears to be a letter issued by Vejalpur Police Station to City Mamlatdar, Ahmedabad City. With reference to the ground placed on record, both these documents are vital and on which the detaining authority has placed reliance.

6. The facts of the present case are covered by the decision of the Division Bench of this Court in the matter of POKHRAJBHAI SOHANBHAI CHANDEL Vs. DISTRICT MAGISTRATE, SURAT & ORS., as reported in 1991 (2) GLR 753, wherein the Division Bench of this Court observed as under in paragraph No.3:-

"Learned Advocate for the petitioner submitted that it is imperative that the detaining

authority must serve the grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention. He submitted that the detenu was given the list of documents accompanying the grounds of detention on which the detaining authority relied upon for making the impugned order as stated in the grounds of detention to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining authority as mentioned in the grounds of detention, but the detaining authority failed to supply legible copy of the relevant document to the detenu which is given at page 195 of the compilation, which affected the detenu's important right of making an effective representation under Art.22(5) of the Constitution of India and, therefore, the order of detention is required to be quashed and set aside. he showed a xerox copy of the document supplied at page 195 of the compilation. On perusing the document, it appears that the document at page 195 is the receipt issued by "Gujarat Rajya Nagarik Purvatha Nigam Ltd.", which is a vital document on which reliance is placed by the detaining authority. Looking to the document, it appears that it is illegible and the name of the payer on which the rubber stamp is applied and the contents of the said rubber stamp are not legible. Mr.Tripathi appearing on behalf of the detaining authority drew our attention to the affidavit filed on the aforesaid point, which is set out at para 12 of the affidavit-in-reply, the relevant part of which reads as under:

"I submit that the petitioner has been supplied with the entire material relied upon by the detaining authority for the purpose of passing the detention order ....In fact, the entire material has been given in order to enable the detenu to make effective representation. It is also absolutely wrong to say that some of the pages are not legible at all, viz.,pages Nos.145, 147, 155, 157, 185 and all the receipts of Weigh Bridge, etc. since mere look at the copies supplied to the petitioner - detenu makes it clear that they are absolutely legible....."

The document at page 195 was shown to Mr.Tripathi

and he fairly admitted that the said document is not legible."

7. In above view of the matter, it is clear that the detaining authority failed to supply legible copies of the said two relevant documents to the detenu for making effective representation. Detenu's right under Article 22(5) of the Constitution of India is clearly infringed. Therefore, further detention of the detenu becomes bad in law. The order under challenge is required to be set aside and quashed on this ground alone.

8. In the result, the petition is allowed. The order passed by the District Magistrate, Ahmedabad on 27th January, 2005, against the petitioner in exercise of powers under Sub Section (2)(a) of Section 3 of the PBM Act is hereby quashed and set aside. The detenu Dulebhai Latifbhai Shaikh is hereby ordered to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)